

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-431

May 16, 2000

ROBERT J. DODGE, ET AL.
Request for Commission Investigation
Into Central Maine Power Company's
Accounting and Record Keeping For
Transactions With Union Water Power
Company and On-Target

ORDER DISMISSING
COMPLAINT

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

On June 23, 1999, Robert Dodge and 17 other persons (Petitioners) filed a Complaint at the Commission pursuant to 35-A M.R.S.A. § 1302. The Complaint asks the Commission to investigate CMP's accounting and record keeping for transactions with Union Water Power Company (UWP) and On-Target, a division of UWP. For the reasons stated below, we find that the Complaint is without merit and, on that basis, dismiss the Complaint.

II. PROCEDURAL HISTORY

CMP filed a response to the Complaint as required by 35-A M.R.S.A. § 1302, and the Commission Advisory Staff (Staff) issued a recommendation that the Commission dismiss the Complaint. Only the Public Advocate filed comments on the Staff Recommendation. On March 15, 2000, we considered the Staff Recommendation and voted to dismiss the Complaint. Before an Order issued, however, Staff discovered supplemental pleadings which had been filed by Mr. Dodge on December 17, 1999. Staff asked CMP to respond to the supplemental allegations. CMP filed its response on April 18, 2000. Neither the Public Advocate nor Complainants responded to CMP's April 18, 2000 filing.

III. THE COMPLAINT AND CMP'S RESPONSE

A. The Original Complaint

The Complaint alleges that:

Union Water Power Company and On Target are wholly owned subsidiaries of CMP. For some period, On-Target and/or Union Water have been using CMP personnel, equipment and vehicles to provide pole-

setting services and other services to utilities and cable companies located in the states of Connecticut, Rhode Island, New Hampshire and Massachusetts. We assert that in doing so, CMP and its affiliates have not been satisfying the requirements of 35-A M.R.S.A. § 713 and Chapter 820 (utility requirements for non-core activities and transactions between affiliates) of the Main (sic) Commission's Rules.

Complaint at 1. The Complainants request that the Commission open an investigation of the transactions between CMP, Union Water (UWP) and On-Target, and take the actions necessary to ensure that CMP is not charging the customers of its regulated utility business for costs attributable to the unregulated business activities of its affiliates. The Complaint does not allege that CMP has failed to properly account for the use of its employees and equipment by its subsidiaries.

B. The Supplemental Allegations

In the December 17 filing, Mr. Dodge makes the following additional allegations:

- Certain CMP employees have represented UWP when negotiating with the IBEW for construction work being performed out of state;
- Early in 1998 On-Target submitted a bid (or bids) to CMP to do pole-setting and was awarded the bid.
- The same person acted as an On-Target employee to submit the bid and as a CMP employee to award the bid.
- On-Target is performing a large amount of CMP's pole-setting work and that work is not being put out to competitive bid.
- On-Target and CMP employees attend the same safety meetings.

In the supplemental filing, Mr. Dodge asks the Commission to investigate the following matters:

- Has UWP been billed for the negotiating work performed by CMP employees?
- Was the pole-setting work awarded to On-Target put out to competitive bid?
- Is it proper for On-Target to submit a bid to CMP when the person submitting the bid for On-Target appears to be the same person who has the responsibility to award the contract?
- Identification of CMP employees and On-Target employees who manage the pole-setting work?
- Is CMP paying the market price for pole-setting work performed by On-Target when such work is awarded outside of a competitive bid process?

- What are the reasons that CMP employees are doing work out-of-state for the unregulated affiliate while employees of the unregulated affiliate are doing work in-state for CMP?
- Are Union Water Power and On-Target paying the full amount of overhead costs when they use CMP resources and employees to complete projects?

C. CMP's Response to Original Complaint

CMP responds that the Complaint is "in actuality part of a larger effort by the International Brotherhood of Electrical Workers ("IBEW") to force UWP to use out-of-state construction locals for its business." Because, in CMP's view, the complaint is a labor dispute, the Commission should determine that this matter is beyond the scope of the Commission's jurisdiction. Moreover, CMP argues that the Complaint fails to allege any specific conduct that is prohibited by section 713 of Title 35-A M.R.S.A. or Chapter 820 of the Commission's rules. Even if the allegations in the complaint are true, CMP asserts, they would not constitute a violation of either 35-A M.R.S.A § 713 or Chapter 820. Additionally, CMP argues that it has already filed its cost allocation manual pursuant to Section 4(G) of Chapter 820 and its outside auditors are currently auditing CMP's 1998 charges to affiliates to verify compliance with Chapter 820. Finally, CMP asserts that it has properly billed On-Target for the use of CMP's resources.

D. CMP's Response to Supplemental Allegations

In response to Mr. Dodge's supplemental allegations, CMP responds first that the supplemental allegations should be dismissed because they do not comply with section 1101(a) of Chapter 110. CMP argues that Mr. Dodge should have provided evidence that the supplemental allegations are being made on behalf of the 17 original complainants. CMP further notes that the supplemental allegations lack detail with respect to the matters complained of and therefore fail to comply with subsections 3 and 4 of section 1101(a).¹ Because we conclude that the Complaint, including the supplemental allegations, is without merit, we do not address CMP's argument concerning technical compliance with the provisions of section 1101(a).

¹ Subsections (3) and (4) of section 1101(a) require the complaint to:

(3) state fully, clearly and with reasonable certainty the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order or rule and section or sections thereof of which a violation is claimed; and

(4) state such other matters or facts, if any, as may be necessary to acquaint the Commission fully with the details of the matter complained of.

CMP further responds that the allegations are either false or fail to allege any improper conduct. CMP provides evidence that certain of the allegations made by Mr. Dodge are factually incorrect. CMP also cites to Commission approval of pole-setting arrangements between CMP and On-Target in Docket Nos. 97-982 and 98-404 as a basis for finding that Mr. Dodge's statements about the alleged impropriety of these arrangements are without merit. Finally, CMP notes that some of the activities alleged in the supplemental filings do not provide any basis for a finding of wrongdoing by CMP.

IV. ANALYSIS

The Commission may dismiss a complaint only if it finds that the utility has taken adequate steps to remove the cause of the complaint or that the complaint is "without merit." CMP has taken no action in response to the complaint; therefore, we examine the complaint to determine whether it has merit. In *Agro v. Public Utilities Commission*, 611 A.2d 566 (Me. 1992), the Law Court interpreted the "without merit" standard to mean that "there is no statutory basis for the complaint, i.e., that the PUC has no authority to grant the relief requested or that the rates, tolls or services are not 'in any respect unreasonable, insufficient, or unjustly discriminatory . . . or inadequate.'" *Id.* at 569, quoting 35-A M.R.S.A. § 1302.

The first prong in the analysis is for determining whether the complaint is "without merit" clearly does not apply here. The Commission has the authority to open an investigation into the transactions between CMP and its affiliates. It also has the authority to take the actions necessary to ensure that CMP's ratepayers are not subsidizing the company's non-core activities. In fact, the Commission has already taken such actions in adopting Chapter 820 which requires CMP to follow specific cost allocation methodologies applicable to transactions between CMP and its affiliates.

Under the second prong of the test, we examine whether there is any basis in the Complaint for us to determine that the rates, tolls or service are unreasonable. The core of the Original Complaint is that UWP and On-Target, CMP's affiliated interests, have been using CMP equipment and personnel to provide pole-setting services and other services to utilities and cable companies in other states. Nothing in chapter 820 or section 713 of Title 35-A prohibits such activities. Chapter 820 and section 713 simply require that utilities engaging in such activities comply with the cost allocation and other provisions of Chapter 820. Because none of the facts alleged could provide support for an argument that CMP is violating Chapter 820 or Section 713 of Title 35-A, the Complaint fails to support an argument that rates are unreasonable. In short, CMP's involvement in the alleged non-core activities would not, standing alone, provide

any basis for a claim that ratepayers are subsidizing non-core activities due to improper cost allocations.²

We further conclude that the supplemental allegations made by Mr. Dodge do not provide any basis to conclude that the Complaint has merit. In Docket No. 98-404, we approved an affiliated transaction between CMP and Union Water Power Company's On-Target Division through which On-Target would provide pole-setting services to CMP. After inspecting the bidding documents and the analysis provided by CMP, we determined that the On-Target bid provided the least-cost alternative. See, *Central Maine Power Company, Request for Affiliated Interest Transaction with Union Water Power Company for Polesetting Services*, Docket No. 98-404, Order at 2 (June 24, 1998). We will not revisit here the propriety of a bid process that we have already examined in detail in Docket No. 98-404. In addition, we agree with CMP that other statements made in both the Original Complaint and in the supplemental allegations simply fail to allege improper conduct.³ For all these reasons, we dismiss the complaint as "without merit."

Dated at Augusta, Maine, this 16th day of May, 2000.

BY ORDER OF THE COMMISSION

Raymond Robichaud
Acting Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

²We note that CMP has developed a cost allocation manual applicable to its non-core activities. CMP and Staff have been working together to ensure that CMP's cost allocation manual and cost allocation methodologies are consistent with the requirements of Chapter 820.

³ We note that neither Mr. Dodge nor the Public Advocate commented on CMP's response to the supplemental allegations although they were provided an opportunity to do so.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.